IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

THE RIGHTS OF FARMERS AND THE PROTECTION OF PLANT VARIETIES

Sukhpreet Singh Brar[1]

Dr. Namah Dutta[2]

[1] Research scholar, LL.M.(UILS),Chandigarh University, Gharuan, Mohali

[1] Assistant Professor, UILS, Chandigarh University, Gharuan, Mohali

ABSTRACT

Through resource-intensive plant breeding techniques, breeders continuously provide farmers with the greatest varieties to exceed customer demand. A system must offer incentives to plant breeders to create superior variations, such as exclusive ownership of the right to manufacture and market those kinds, in order to encourage continual innovation in variety creation. The most frequent way to secure intellectual property protection is through plant variety protection, often known as the breeder's privilege.

"The Protection of Plant Variety and Farmers Right Act, 2001" grants a dual intellectual property right, one for the variety and the other for the denomination that the breeder has given it. Only the registration of a plant variety grants the heritable and transferable rights afforded by this Act. This Act also allows for the registration of new or existing Essentially Derived Varieties (EDV). Farmers have the right to store, use, sow, resew, trade, or sell their agricultural products, including unbranded seed from a registered variety.

'The International Union for the Protection of New Varieties of Plants' established approach has been implemented by most nations (UPOV). The variety must demonstrate its uniqueness by satisfying the three criteria of distinctness, uniformity, and stability in order to be given plant variety protection. This review summarises (1) additional debates on the open-source seed movement, value for cultivation and usage testing, and fundamentally derived varieties. It also discusses (2) the plant variety protection via UPOV convention, (3) Genetic make-up, molecular analysis, and sequencing are specialized approaches for distinctness, uniformity, and dependability. Their difficulties and promise are discussed.

Keywords: *Breeding, Plant Variety Protection (PVP), Breeder's right.*

1.1 INTRODUCTION

It was decided that farmers' rights in respect of their contributions made at any time to conserving, enhancing, and making accessible plant genetic resources for new plant varieties must be recognised and protected in order to enable the formation of an effective system for the preservation of plant varieties, the rights of farmers and plant breeders, and to facilitate the development of new plant varieties. Increased yields, enhanced quality, and resistance to biotic and abiotic stresses are some of the agronomic advantages of improved plant varieties.

In contemporary agriculture, crop varieties are created by a process called plant breeding, in which two or more parental lines with desirable traits are mated, and the desired traits are then monitored over several generations in various environmental contexts. When it passed "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001," the Indian government took a unique stance. The regulations of India are sufficient to protect the interests of farmers and public sector breeding institutions while also complying with the International Union for the Protection of New Varieties of Plants (UPOV), 1978[3].

The law demands that TRIPs be applied in a way that advances the unique socioeconomic interests of everyone directly involved, including the public and private sectors, academics, and farmers with limited resources. The law acknowledges the roles that commercial plant breeders and farmers play in plant breeding activities. One of the rights made available by this Act is the only right to cultivate, sell, advertise, promote, import, and export the variety. Breeders' rights are subject to civil and criminal remedies, as well as regulations regarding benefit sharing and mandatory licencing in the event that a designated variety is not appropriately provided to the general public. If a registered variety was created utilising a variety to whose evolution the village or local community made a substantial contribution, compensation is also given to such communities. The PPV&FR Rules, 2003, include information on the specific steps and methods for putting this Act into effect.[4]

1.2 STATEMENT OF PROBLEM

For a very long period, IPR did not apply to agricultural goods, and nations founded their agriculture policy on the idea of common heritage. Saving harvested seed for the crop the next year is a long-standing agricultural practice. Crops and other plant species, which serve as the basis for all agricultural operations, have established a large portfolio of genetic variety thanks to small farmers and their communities. Numerous international initiatives for the conservation of plant varieties have been launched in response to the breeders'

[3] Plant variety protection Act, 2001, *available at* https://journals.stmjournals.com/topics/plant-variety-protection-act-2001/ (last visited on Jan 04, 2023).

[4]Protection of Plant Varieties and Farmers' Rights Act, 2001, *available at:* https://vikaspedia.in/agriculture/policies-and-schemes/crops-related/protection-of-plant-varieties-and-rights-of-farmers/protection-of-plant-varieties-and-farmers-rights-act-2001 (last visited on Jan 6, 2023).

increasing needs. On the other hand, numerous international measures have also been made to safeguard the interests of small farmers, but this study argues that some of the aspects of these measures have interrelated legal protections, making it difficult for the member nations to balance the rights of farmers and breeders in their legal provisions.

1.3 OBJECTIVES

- A brief overview about Farmers' Rights under Intellectual Property Regime.
- To study Protection of farmers' rights and international legal frame work

1.4 FARMERS' RIGHTS UNDERNEATH THE SYSTEM OF INTELLECTUAL PROPERTY

Farmers' rights are fundamentally at odds with the ideas behind intellectual property. Intellectual property rights are meant to serve as an incentive for innovation for a short time. Farmers' rights are a retroactive incentive with no time restriction for maintaining genetic resources of plants. The rights offer compensation for on-the-field advancements. Between 1988 to 1991, the Keystone International Dialogue on Plant Genetic Resources provided recommendations for creating a system of informal innovation that would be recognized and rewarded, symbolized by the idea of farmers' rights. Farmers' rights act as a check on plant and seed patents as well as breeders' rights. To preserve our biodiversity, it is necessary to increase the local community's understanding and rights. The concept of farmers' rights originally surfaced in the FAO International Undertaking on Plant Genetic Resources.

Farmers may not exactly follow the requirements for distinctness, stability, and uniformity, but they also have standards in place for recognising the improved varieties they develop. These innovations are hardly ever acknowledged, though. Farmers don't breed in perfect lab environments; instead, they based their choices on accurate environmental knowledge acquired via biological evolution and an unending process of evolution. Indian farmers have created several varieties that are resistant to salt, flood, drought, and other conditions[5]. If breeders who generate new variations from already-existing genetic resources also have a right to control and ownership as a consequence of striving to develop the new kinds, farmers also have a right to identify, protect, and advance the traditional variety.Farmers' rights depend on the conservation of agricultural genetic diversity, which is the cornerstone of all food agriculture and production globally. The genetic diversity of agricultural plants is the foundation of agriculture. In order to handle the challenges given by crop diseases and pests marginal soils, and finally but not least, altering climatic conditions, it provides the stock from which plant traits may be identified, and it is crucial for dividing risks for farmers.

The ability to adapt to shifting environmental effects is made possible by plant genetic variety, which is perhaps more significant for farming than any additional environmental component. Farmers have traditionally been the key players in environmental protection, seed preservation, cross-breeding to create new kinds with better-suited features, and other activities. They have simultaneously taken on the roles of

[5] E. Verkey, "Shielding farmer's right" 2 *Journal of Intellectual Property Law & Practice* (2007).

producer, consumer, and conservator. Because of this, they are the original owners of agricultural resources, particularly in developing countries. It was acknowledged that farmers' contributions as guardians and developers of the gene pool, on which was based much of the gradual improvements that were accomplished, were sometimes disregarded while commercial breeders were protected by PBRs or through patents on plant varieties. This was the beginning of the realisation that farmers are also intellectual property rights owners in a manner that is comparable to, if not stronger than, that of current biotechnologically monitored plant breeders. The farmers were not given rewards or incentives because there was no system in place.[6]

PBR and patent rights on plant varieties were first granted by industrialised nations in the 1960s and 1970s. Private seed companies were becoming more and more involved in plant breeding. With no right for farmers to store seed from their own farms, the patenting of cultivars completely privatises the seed supply. The PBR is more equitable since it simultaneously respects farmers' rights to conserve, sow, trade, share, and sell seeds. Farmers in wealthy industrialised nations and those in underdeveloped, emerging nations see the influence of farmers' rights on seed quite differently. The agricultural industries of wealthy nations differ from those in India in several ways.In India, farming is practised by more than 65% of the population, compared to fewer than 4% of those in wealthy nations. The typical farm size in wealthy nations is a few hundred acres, but in India it is less than one acre.[7] Farmers in wealthy nations have access to significantly more resources and advanced technology than farmers in India. India's agriculture is much more diverse and abundant in terms of types than the agricultural of wealthy nations. As a result, the denial of farmers' traditional entitlement to seeds benefits farmers in wealthy nations much more than their counterparts in poorer countries like India.

During the discussion of document CPGR/87/4, the Working Group came to the conclusion that those individuals/farmers (in the broad sense of the word) who first cultivated wild plants and preserved and biologically improved the cultivated varieties over the thousands of years had played a significant role in the development of modern commercial plant varieties[8]. Recently, "breeders' rights," or the right of knowledgeable plant breeders or the companies that hire them to partake in the financial gains derived from the marketing of the new types, have been established in some countries. However, as stated in document CPGR/87/4, the rights of the first group, or more particularly, the "rights of farmers," were not currently acknowledged in writing. The Working Group believed that these rights represented fair remuneration for the difficult work performed by numerous farming generations before them. And which had provided the framework for the knowledge already in existence as well as the substance on which the majority of technical advancements were based. However, it was decided that the name "Farmers' Rights" was the most descriptive. Alternative names like "right of the nations of origin" or "gene donors" were proposed.[9]

[6] Ahuja, Rajshree Chandra, "Intellectual property rights and the politics of knowledge: questions of knowledge, property and rights" available at http://hdl.handle.net/10603/14592 (last visited on Jan 07, 2023).
[7] http://en.wikipedia.org/wiki/plant-breeding
[8] Protection of farmers? Rights in India- challenges for law in the context of plant breeders? Rights, *available at* https://dyuthi.cusat.ac.in/xmlui/bitstream/handle/purl/2932/Dyuthi-T0923.pdf.txt (last visited on Jan 07, 2023).
[9] http://www.farmersrights.org/about/fr_history_part2.html (last visited on Jan 02, 2023).

While access is granted to the PGR of the farmers, it is important to keep in mind that anyone who creates a new variety using the PGR will be granted an intellectual property right known as the PBR[10]. This demonstrates the potential for privatising natural resources like plants. Or on some plant kinds, property rights may be granted. The response to this claim regarding FRs should be that farmers should also be granted the same type of property right. Therefore, there is potential for creating a property regime for FRs. From the perspective of human rights, there may be several rights.

The first demands for IPRs in farming appeared when legislation was modified in 1988 to permit private sector engagement in the seed industry (the New Seed Policy). The Seed Society of India, established in 1985, was the first group to vehemently promote the need for national farmers' rights in India. The conclusion of the TRIPS agreement led to greater external pressure on India to develop PBRs. The public sector's early hostility to plant variety conservation in India has altered as a result of changes in the private industry's role and the formal and informal sectors' interaction. This is mostly due to the fact that it would permit private businesses to make money off of breeding materials produced by the public sector.[11]

Since they only acknowledge formal discoveries and disregard indigenous knowledge systems, they claimed that TRIPS and western IPR regimes encourage "bio-piracy." Bio-piracy is the term used when developed countries use traditional knowledge or resources unremunerated to produce commercial goods. While TRIPs permits nations to create "effective sui generis" systems, several developing nations are adopting norms that go above and beyond the bare minimum, as UPOV 1991.

A reform in seed policy in India in 1988 made it possible for private sectors to enter the seed industry. This culminated in pressure on India to comply with TRIPS, which sparked a call for the protection of farmers' rights in India. Many NGOs emphasised how Western IPR regimes like TRIPS aimed to encourage bio-piracy. It was also noted that, in contrast to other wealthy and industrialised nations, where just 4% of the population were farmers, approximately 65% of Indians relied on agriculture as their main source of income.[12] India, which has a highly rich biodiversity, was thus had to consider the wellbeing of its agricultural population.

A much more unique feature of Indian law is the Act's provision for the registration of traditional variations. Most nations only permit protection for newly developed varieties created by expert breeders; older varieties are not given the same privilege. Tribal rights should be considered an integral element of FRs, which would be a significant improvement to current Indian law. However, it is equally vital that the Act be amended to incorporate a better system for benefit sharing and a practical way for farmers to request compensation in the event of contaminated seed.

[10] *Ibid.*

[11] ShailaSeshia,' Plant Variety Protection and Farmers' Rights – Law Making and Cultivation of varietal control', Economic and Political Weekly, July 6th 2002, p. 2742

[12] Narayanamoorthy, State of India's Farmers, Economic and Political Weekly, February 11th 2006

1.5 THE GLOBAL LEGAL SYSTEM AND THE PROTECTION OF FARMERS' RIGHTS

The many stakeholders and individual Nations were able to address the concerns about the legal protection for plant varieties on a flexible framework provided by international treaties and accords on intellectual property. The private businesses operating in this sector would be negatively impacted by any attempts to undermine or reduce the protection of plant types. Plant genetic resources are required for agriculture and food production. The essential raw element for agricultural genetic transformation is plant genetic resources. Farmers' selection, traditional plant breeding, or contemporary biotechnologies can all be used to enhance genetics. Therefore, it is crucial to safeguard both farmers and plant breeders in order to facilitate such genetic advancements.

The International Federation for the Conservation of New Planting Material, or UPOV, is an international organisation with its main office in Geneva. The purpose of the UPOV Convention is to ensure that the successes of plant breeders are recognised by the Union's member countries by granting them an exclusive right to property based on a set of defined and clearly defined requirements.

In order to encourage the creation of novel plant varieties for the betterment of society, UPOV's mission is to offer and advance an efficient system of plant variety protection. On August 24, 2015, there were 73 members of UPOV. An increasing number of States have started the UPOV Convention's process for receiving help creating legislation.[13]Plant breeding aims to create novel, distinctive, homogeneous, and stable genetic structures. The same degree of protection is afforded to each UPOV Convention participant. Improving global harmonisation is a crucial instrument for technological transfer, global trade, and the preservation of novel plant species. The UPOV Acts serve as the foundation for the majority of plant variety laws in the globe.

An efficient sui generis approach for plant variety protection is provided by the UPOV Convention. The UPOV Convention's scope of protection was already carefully crafted to encourage plant breeders to create new varieties that will be advantageous to both farmers and consumers. The ability of the global community of breeders to freely exploit protected varieties, one of the most significant plant genetic resources, for additional breeding is a major component of the UPOV system. Thus, the rights of plant breeders promote sustainable agriculture, productivity, revenue, international commerce, and overall economic growth.[14]
Contracting Parties are obligated by the Convention to take the required actions to carry out its provisions. The members should:
I. provide for the necessary legal remedies for the proper implementation of breeders' rights; II. maintain an authority charged with granting breeders rights or delegate the said responsibility to an authority retained by another Contracting Party; and

[13] http://www.upov.int/members/en/accessed on 29-12-2022
[14]UPOV Press Release No. 65, Geneva, 29th June, 2005

III. concentrate on making sure that the public is informed through the regular publication of data regarding applications for and subsidies of breeders' rights, and - proposed and approved.[15]

The preamble of the UPOV Convention makes clear how important it is. "Persuaded of the relevance trying to attach to the protection of new varieties of plants not only for growth of agriculture in their region but also for preserving the rights of breeders, Aware of the special difficulties stemming from the acknowledgement and security of the right of something like the originator in this field and notably of the restrictions that the prerequisites of the national good may impose on the free exercise of the creator's right," reads the preface of the 1961 Convention[16].

In 1968, the Convention became operative. Later, in 1972, November 8, 1981 marked the effective date of the 1978 Act. Following the 1961 Act, rapid technological advancements led to the creation of genetic manipulation and sophisticated tissue culture.

These advancements, along with the knowledge gained from running the 1961 Convention, served as strong impetuses for the 1991 amendment of the Convention. April 24, 1998 saw the implementation of the 1991 Act. By joining UPOV, a State encourages foreign breeders to participate in plant biotechnology and germinating seeds on its own soil and gives its own flower breeders the chance to get protection in other member States[17].

1.5.1 UPOV 1972 AMENDMENT ACT

Only six nations had joined the UPOV in 1961, and it was revised in 1972[18].The Supplemental Act of November 10, 1972, provided the following rationalisation for the amendment: "Considering further that it is favourable to modify the regulations of the that State legislature on the charitable donations of member Member States of the Union because the system of donations of member Member States of the Union provided for and by that Accord does not allow for the sufficient differences among the participant State of the Union regarding the share in the total of the charitable.

1.5.2 UPOV ACT OF 1978

In acknowledgment of the significance of the 1961 Article 11 in the global context of preserving unique ornamental plants and breeders' rights, the 1978 modification included new features. A unique plant variety may be granted a patent or even a special title of security under the 1978 Act [Art. 2(1)].

[15]23 UPOV 1961, Art. 30 - Implementation of the Convention on the Domestic Level; Special Agreements on the Joint Utilization of Examination Services]
[16]UPOV 1961, Preamble
[17]5 UPOV 1961, Art. 3 - National Treatment
[18]The Additional Act of 1972, Amended Articles 22, 26 and 27 of the UPOV 1961 Act.

The 1978 UPOV Act incorporates the majority of the international IPR obligations listed in Part I above, including the definition of the relevant subject and content marketing, qualifications, completely separate rights, benefit-sharing, mutuality, terms of protection, special cases, and limitations to exclusive rights. However, there are no regulations that govern or enforce Most Preferred Nation (Favored Nation) treatment.

1.5.3 Mandatory Licensing in Public Places

Breeders' exclusive rights may be restricted by members under Article 9 of both the 1978 Act for "concerned with public interest." When such limitations are put in place to guarantee the variety's wide distribution (for instance, when the grower fails to meet requirements for the wide assortment in a plausible price and quantity or unreasonably refuses to grant third parties a licence to use the variety), the breeder must be compensated fairly.

The 1978 Act grants protection for just fifteen years starting on the day the deed of protection is issued. The duration will be for eighteen years in the case of vines, woody plants, fruit trees, and decorative trees, including their rootstocks (Art. 8)[19]. Similar to the 1961 Act, the 1978 Act spells forth requirements that must be met before certain groups can be granted rights (Art. 6)[20].

The new type has to be distinct, sufficiently homogeneous, stable, and should have a name. It must be identifiable from any other variation whose existence is widely known at the time protection is requested by one or more significant features. Examining common knowledge involves examining a variety of characteristics, such as current cultivation or marketing, entry in an official register of kinds that have been created or are being created, placement in a given construct, or exact description in a journal.

1.5.4 The grounds for awarding a breeders' right

Where another variety is

- novel,
- unique,
- uniform, and
- stable, the breeders' right must be given[21].

[19]UPOV 1978 Act, Art. 8.
[20]Ibid., Art. 6.
[21]Ibid., Art. 5.

1.6 CONCLUSION

Indigenous peoples from developing countries typically do not receive compensation in the form of a share of the royalties for providing the starting material for such spawning efforts, despite the fact that intellectual property protection in the form of PBR grants investigators and corporations from developed countries financial rewards for their breeding efforts.

The PBR has been the target of several international initiatives to safeguard it, leading to the signing of numerous treaties and conventions, including the UPOV and TRIPS Agreement. However, because they fail to acknowledge and defend farmers' rights, which are equivalent to breeders' rights, the UPOV and TRIPS Agreements fall short of the aspirations of the farmers. However, the TRIPS Agreement leaves open the possibility of developing an efficient sui generis type of plant variety protection that may be effectively used to preserve the country's interests as well as farmers' freedoms by the member nations.

The need for farmers' rights has been considered as a consequence of balancing the rights of plant breeders, farmers, and communities that have interacted and protected biological resources for centuries. The farmers' right, which was previously marginalised, has emerged as a counter to the Plant Breeders' Rights, which have long held sway**.**

In the international sphere, patent rules date back to the Paris Convention of 1883, while plant variety protection dates back to the UPOV Convention of 1961. According to UPOV convention, stability, homogeneity, and distinctness were the three main conditions for protection. Six people signed the 1961 convention, which resulted in modifications in 1972, 1978, and 1991. There are 73 members of UPOV as of August 2015.

Significant modifications resulted from the 1991 amendment, including the safety of all genera on species, allows for dual security under the patent system, breeders' rights, and protection of newly found varieties. Additionally, it stipulated that breeders may not prohibit actions taken for experimental reasons and offered an exception for study. It is obvious that, in the sense of PBR, breeders would be in desperate need of expertise of PGR and cultural traditions because they serve as catalysts in the development of new plant varieties, whereas farmers would need to use the new varieties that are evolved from these PGR and ancient traditions.

BIBLIOGRAPHY

Books:

- Dr. Elizabeth Verkey , Law of Plant Varieties Protection, Eastern Book Company, Lucknow, (2007)
- AvinashShivade, Intellectual Property Manual, Butterworths, (2004)
- Peter Drohas ED., Intellectual Property, England: Ashgate Publishing, (1999)
- Dr. T. Ramakrishna, Biotechnology related Intellectual Property Rights, Bangalore: CIPRA, National Law School of India University, (2005)
- Graham Dutfield, Intellectual Property Rights, Trade and Biodiversity, Earthscan, London, (2000)
- JayashreeWatal, Intellectual Property Rights in the WTO and Developing Countries (2001)
- BibekDebroy ed., Intellectual Property Rights, Rajiv Gandhi Institute for Contemporary Studies (1998)

Webliography:

- http://www.fao.org/
- http://www.cbd.int/
- http://www.upov.int/
- http://www.ipindia.nic.in/
- http://www.intellectualproperty.gov.uk/